

MINUTES HEARING OFFICER NOVEMBER 19, 2013

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Vanessa MacDonald, Hearing Officer Steve Abrahamson, Planning & Zoning Coordinator Sherri Lesser, Senior Planner Diane McGuire, Administrative Assistant II

Number of Interested Citizens Present: 20

Meeting convened at 1:45 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by December 3, 2013 at 3:00 PM, to the Community Development Department.

- 1. Ms. MacDonald noted that the Hearing Officer Minutes for November 6, 2013 had been reviewed and approved.
- Review of compliance for a Use Permit to allow live entertainment for BOSTON'S GOURMET PIZZA (PL130185) located at 400 West University Drive. The applicant is Jacob Guzman. THIS IS A 6 MONTH REVIEW FROM THE JUNE 18, 2013 HEARING.

Jake Guzman was present to represent this case.

Steve Abrahamson noted that this use permit for live entertainment had been approved at the June 18, 2013 Hearing Officer hearing and that the applicant has returned for a six month review of his adherence to the assigned Conditions of Approval. Boston's Restaurant has occupied this site since opening in 1999 and has had four (4) owners. The applicant is proposing to introduce karaoke, small (3 member) bands, disc jockeys, comedians and face painters as live entertainment ancillary to the existing dining experience. The entertainment would occur primarily on weekends from 9 PM to 2 AM in an area used for food service of two tables which would be relocated during the entertainment. The calls for service have been typical for business within the area; police staff indicated there have been no issues with this business or location pertaining to the live entertainment use.

There has been no public input on this case.

Ms. MacDonald asked the applicant how long he had been conducting live entertainment at this location. Mr. Guzman responded that he had managed this business since January 2013. Ms. MacDonald explained that vibration from live music can sometimes prove a nuisance to neighbors; Mr. Guzman indicated his awareness and intent to adhere to the assigned Conditions of Approval.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

- 1. No significant increase in vehicular or pedestrian traffic.
- 2. The use does not increase the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- 3. The use is not in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan; and does not contribute to the deterioration or the neighborhood or the downgrading of property values.
- 4. The use is compatible with existing surrounding structures and uses.
- 5. There is adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public. The business has an approved security plan with the Tempe Police Department and has a demonstrated track record of controlling behavior on site.

DECISION:

Ms. MacDonald re-approved PL130185/ZUP13061 subject to the following conditions:

- 1. The Use Permit is valid for the plans as submitted within this application.
- 2. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
- 3. Any intensification or expansion of use shall require a new Use Permit.
- 4. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
- 5. Live entertainment to cease at 12 midnight Sunday Wednesday and 1:55 am Thursday Saturday.
- The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this
 approval. Contact William Gallauer at 480-350-8749 before June 19, 2009. CONDITION REMOVED BY
 STAFF
- 7. Replace all dead or missing plants and trees. Maintain trees on property to preserve natural growth patterns, do not top or pollard the trees.
- 8. Submit an application for a Development Plan Review by July 2nd, 2013 or a double fee will be applied to the request at the time of submittal. **CONDITION WAIVED BY STAFF**

3. Request approval for a Use Permit to allow a restaurant use in the GID zoning district for **THE GARAGE MOTOR SPORTS FORK AND TORQUE (PL130361)** located at 1000 North McClintock Drive. The applicant is Julie Hatch.

CONTINUED FROM THE NOVEMBER 6. 2013 HEARING OFFICER

Julie Hatch and Dave Corba were present to represent this case.

Sherri Lesser, Senior Planner, noted that the proposed use is located at the SW corner of Curry Road and McClintock Drive. It is a restaurant which will be located on a site in conjunction with a motorcycle sales and rental dealership. It is a fast paced 'diner' themed concept to play off the other 'motor' use on site. On October 14, 2013 Community Development staff administratively approved a use permit transfer to Top Spoke LLC to allow the rental and sales of motor vehicles. The site has ample parking to accommodate both uses adequately. Staff is recommending approval of this request.

There has been no public input received. The applicant has held meetings with representatives from the North Tempe Neighborhood Association and made a presentation to the body at their monthly meeting. Following that presentation an e-mail was received from Darlene Justus, President of the North Tempe Neighborhood Association that indicated their support of this request.

Ms. MacDonald questioned the applicant about the Neighborhood Meeting. Ms. Hatch responded that it was very positive, and that their intent is to make every effort to partnership with the North Tempe Neighborhood Association. Ms. MacDonald noted that a theme restaurant abutting a residential area sometimes presents problems for the residents.

Mr. Lane Carraway, Chair of the Cavalier Hills Neighborhood Association, spoke in support of this request, noting that the applicant had been very forthcoming about their plans and business operation. Ms. Hatch had explained the concept and Mr. Carraway stated that he felt this business would be great for Tempe and wished them the best.

Ms. Darlene Justus, President of the North Tempe Neighborhood Association also spoke in support. She stated that she had the same sentiments as Mr. Carraway and noted that the applicant(s) had offered to help with a fund raiser located at their facility in support of the association.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

- 1. No significant increase in vehicular or pedestrian traffic. The volume of customers will not create an excess of traffic for the area.
- 2. The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.
- 3. The proposed development would not contribute to neighborhood deterioration or downgrade property values. It will further the goals and objectives of the element of the General Plan to provide a stable and sustainable economic vitality to Tempe.
- 4. The proposed use appears to be compatible with surrounding structures and uses.
- 5. The proposed use appears to have adequate control of disruptive behavior.

DECISION:

Ms. MacDonald approved PL130361/ZUP13131 subject to the following conditions:

- 1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
- 2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
- 3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
- 4. Any intensification or expansion of use shall require a new Use Permit.
- 5. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
- 6. The use permit is valid for THE GARAGE MOTOR SPORTS FORK AND TORQUE and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee. Should the business be sold, the new owners must contact Community Development staff for review of the business operation.
- 7. All business signs shall be Development Plan Review approved and permits obtained. No banners, pennants, balloons allowed without obtaining permits; portable signs strictly prohibited.
- 8. All business signs shall receive a Sign Permit. Contact Dean Miller at 480-350-8372.
- 9. Obtain all necessary clearances and permits for tenant improvement from the Building Safety Division.
- 10. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

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 Request approval for a Use Permit to allow resale retail for SOUTH POINT PLAZA – GOODWILL OF CENTRAL ARIZONA (PL130398) located at 2700 West Baseline Road, Suite Nos. 111-124. The applicant s are Jason Morris and Benjamin Graff, Withey Morris PLC.

Benjamin Graff of Withey Morris PLC was present to represent this case.

Sherri Lesser, Senior Planner, noted that the applicant is requesting a use permit to allow a resale retailer (Goodwill of Arizona) located at the South Point Plaza, Suite Nos. 111 – 124 which is located on the north side of Baseline, east of 48th Street. It will be remodeled on the inside to accommodate the proposed use with a total building area of 23,513 s.f. Staff has received numerous letters of support for this request from the surrounding businesses within the complex and is recommending approval of this request.

Ms. MacDonald asked Mr. Graff if he understood the conditions of approval. Mr. Graff responded that he did, and that it was the specific intent of the applicant to be a good neighbor to the surrounding area.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

- 1. There should be no significant increase in vehicular or pedestrian traffic in adjacent areas. The traffic generated by the proposed use should be similar to normal commercial retail uses.
- 2. The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.
- 3. The proposed development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.
- 4. The proposed use appears to be compatible with surrounding uses. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

DECISION:

Ms. MacDonald approved PL130398 / ZUP13133 subject to the following conditions:

- 1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
- 2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
- If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining
 party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a
 public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the
 Use Permit.
- 4. Any intensification or expansion of use shall require a new Use Permit.
- 5. The use permit is valid for Goodwill of Arizona and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- 6. No outdoor storage of inventory or donations will be allowed.
- 7. All business signs shall receive a sign permit. Please contact Dean Miller at 480-350-8435.
- 8. A Development Plan Review (DPR) is required for any exterior modifications.
- 9. All rear exit doors require a lexan vision panel or 180 degree rotatable viewer. Details to be reviewed in building permit plan review.
- 10. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

5. Request approval for a Use Permit to allow a tobacco retailer (electronic cigarettes and accessories) for **HAUS OF VAPORS (PL130405)** located at 946 South Mill Avenue. The applicant is Andrew Yi.

Andrew Yi was present to represent this case.

Sherri Lesser, Senior Planner, noted that this site is on the west side of Mill Avenue next to Subway. The former use of this site was a cellular store. There will be no tobacco or tobacco related products sold at this store. She indicated that Condition of Approval No. 2 be modified to indicate this fact.

Ms. MacDonald asked Mr. Yi if he would have a problem with Condition of Approval No. 2 being modified to indicate that no tobacco related items would be sold. Mr. Yi said he did not. Ms. MacDonald asked Mr. Yi what type of accessories would be sold. Mr. Yi displayed an electronic cigarette and stated that accessories such as batteries for the device would be sold. Mr. Yi also noted that there would only be a mild scent similar to the smell of coffee produced by these electronic cigarettes.

Ms. MacDonald noted that this request meets the criteria for a use permit:

- 1. There will be no significant increase in vehicular or pedestrian traffic. The proposed use is similar to other retail uses in the area and would not generate significant traffic to the area.
- 2. There are restaurants within the commercial center. Customers who purchase electronic cigarettes are not creating smoke and would not create a nuisance to other businesses on site with smoke.
- 3. With the proposed conditions of approval, the proposed retail use is not in conflict with the General Plan and would not contribute to the deterioration of the neighborhood or downgrading of property values.
- 4. The use is compatible with the existing structure and surrounding uses; there are no proposed changes to the exterior of the building.
- 5. Adequate control of disruptive behavior both inside and outside the premises. Staff inside will be responsible for checking the age of those wishing to purchase products.

DECISION:

Ms. MacDonald approved PL130405 / ZUP13134 subject to the following conditions:

- 1. This Use Permit or Variance is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
- The Use Permit is valid for the plans and tobacco retail products as submitted/described within this
 application and electronic cigarettes and accessories as described in the applicant's letter of explanation.
 MODIFIED BY STAFF
- 3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
- 4. Any intensification or expansion of use shall require a new Use Permit.
- 5. No outdoor live entertainment or outdoor speakers shall be allowed.
- 6. Use Permit for Tobacco Retail does not allow live entertainment live entertainment requires a separate Use Permit.
- 7. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
- 8. The Use Permit is valid for Haus of Vapors and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- 9. All business signs shall receive a Sign Permit. Contact Dean Miller at 480-350-8435.
- 10. Any intensification or expansion of use, including shall require a new Use Permit.

- 11. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
- 12. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
- 13. The owner/management shall adhere to the City Adopted International Mechanical Code.

6. Request approval for a Use Permit to allow a tobacco retailer (electronic cigarettes and accessories) for **X HALE VAPOR LOUNGE LLC (PL130406)** located at 1207 North Scottsdale Road. The applicant is Robert Schober.

Robert Schober was present to represent this case.

Sherri Lesser, Senior Planner, noted that the site is located on the east side of Scottsdale Road in a two story building previously occupied by auto and motorcycle sales dealerships. The proposed shop will be 1410 ft. of retail space downstairs selling electronic cigarettes and related accessories with offices/storage upstairs. The store will feature a lounge area for customers to sample the e-cigarette products. They will have 2 to 3 employees. Staff has received an e-mail of concern from Darlene Justus, President of NTNA indicating that they have not had an opportunity to research this type of use and asking for a 6 month review date to be added to the Conditions of Approval for this applicant.

Ms. MacDonald asked Mr. Schober if he had read the assigned Conditions of Approval. He stated that he had not. A copy was given to him and the Conditions were read out loud. He acknowledged his understanding of them, and asked about Condition of Approval No. 4, which states 'Any intensification or expansion of use shall require a new Use Permit.' Ms. MacDonald explained that a new use permit would be required if Mr. Schober decided at a later time to start selling tobacco products.

Ms. Darlene Justus, President of the North Tempe Neighborhood Association spoke noting that Mr. Schober had made a presentation to their organization on November 18th. This is a relatively new type of business and while NTNA is not opposing the business, they are not supporting it either as they don't know enough about the business and its products at this time. She requested that the Hearing Officer add a Condition of Approval to allow the applicant to return in 6 months for a review by the Hearing Officer.

Mr. Lane Carraway, Chair of the Cavalier Hills Neighborhood Association, spoke and seconded the comments made by Ms. Justus.

After discussion with the applicant and staff, Ms. MacDonald added two (2) additional Conditions of Approval. Condition No. 14 addresses the 6 month review; Condition No. 15 addresses the hours of operation. Ms. MacDonald stated that she felt that 10 PM is a reasonable closing time.

Ms. MacDonald noted that this request meets the criteria for a use permit:

- 1. There will be no significant increase in vehicular or pedestrian traffic. The proposed use is similar to other retail uses in the area and would not generate significant traffic to the area. The former use of this site was a motorcycle dealership and customers are expected to be from the surrounding area.
- 2. Customers who purchase electronic cigarettes are not creating smoke and would not create a nuisance to other businesses on site with smoke.
- 3. With the proposed conditions of approval, the proposed retail use is not in conflict with the General Plan or considered detrimental to the surrounding neighborhood.
- 4. There are no proposed changes to the exterior of the building; the use is compatible with the existing structure and surrounding uses.
- 5. Adequate control of disruptive behavior both inside and outside the premises. Staff inside will be responsible for checking the age of those wishing to purchase products.

DECISION:

Ms. MacDonald approved PL130406 / ZUP13135 subject to the following conditions:

- 1. This Use Permit or Variance is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
- The Use Permit is valid for the plans and tobacco retail products as submitted/described within this
 application for electronic cigarettes and accessories as described within the applicant's letter of explanation.
 MODIFIED BY STAFF
- If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining
 party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a
 public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the
 Use Permit.
- 4. Any intensification or expansion of use shall require a new Use Permit.
- 5. No outdoor live entertainment or outdoor speakers shall be allowed.
- 6. Use Permit for Tobacco Retail does not allow live entertainment live entertainment requires a separate Use Permit.
- 7. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
- 8. The Use Permit is valid for X Hale Vapor Lounge and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- 9. All business signs shall receive a Sign Permit. Contact Dean Miller at 480-350-8435.
- 10. Any intensification or expansion of use, including shall require a new Use Permit.
- 11. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
- 12. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
- 13. The owner/management shall adhere to the City Adopted International Mechanical Code.
- 14. Applicant shall return in 6 months for a review of this use permit by the Hearing Officer (Wednesday, May 21, 2014 Hearing Officer). ADDED BY HEARING OFFICER
- 15. Hours of operation for this business shall be from 9 AM to 10 PM, Monday thru Sunday. ADDED BY HEARING OFFICER

7. Request approval for a transfer of a Use Permit to allow resale retail for **DANELLE PLAZA – THE QUALITY GARAGE SALE STORE (PL130409)** located 105 West Southern Avenue. The applicant is Gene Olsen.

Gene Olson was present to represent this case.

Steve Abrahamson, Planning & Zoning Coordinator, noted that this business is located within Danelle with multiple property owners and shared parking on the SW corner of Mill and Southern Avenue. The existing business is seeking to relocate from Suite 35 to a building located at 105 West Southern Avenue .The proposed new location is larger in size . The applicant received a Use Permit for retail resale on February 19, 2013 at Suite No. 35 in the center of the development surrounded by parking and without street frontage. The applicant has secured lease opportunity within the condominium building on Southern Avenue providing greater business visibility and a space twice as large as the current location. The new location was the former Walt's TV Repair building which had been in business for a long time and is 3,700 s.f. The applicant purchases items from auctions off site for resale of new and used items such as clothing, household items, movies and music. There are other retail businesses located in Danelle Plaza, including another resale business, the ARC Thrift Store that has been operating for 9 years. The business operation will remain the same as its previous location just in a larger location. Staff supports this request.

Mr. Olson acknowledged the Conditions of Approval and his understanding of them.

Ms. MacDonald noted that this request meets the use permit criteria:

- 1. There should be no significant increase in vehicular or pedestrian traffic as there is only one employee (the owner) and the projected number of customers is between 10 and 20 per day. There are over 200 parking spaces available in the shopping center for these individuals.
- 2. Because the business is located within an existing suite, no nuisances arising from construction of structural additions will occur. The retail use and the minimal customer traffic of The Quality Garage Sale Store are not expected to contribute to any other associated nuisances.
- 3. The establishment of this business in the vacant suite will potentially combat the deterioration that is associated with building vacancy and will promote positive activity within the shopping center.
- 4. The resale retail business is compatible with the existing surrounding structures and uses within Danelle Plaza which contains other retail, restaurants and one other resale business.
- 5. Adequate control of disruptive behavior both inside and outside the premises. This store is not a donation drop off center as the owner purchases the products sold in the store off site at storage unit auctions. The absence of the drop off center prevents the chance of items to accumulate around the drop off bin or for people loitering to take from the accumulated items after hours. The site does not operate as a consignment, there is no cash transactions for items brought in; all items are purchased off site.

DECISION:

Ms. MacDonald approved PL130409 / ZUP13136 subject to the following conditions:

- 1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
- 2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
- 3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
- 4. Any intensification or expansion of use shall require a new Use Permit.
- 5. Hours of operation to end no later than 6:00 PM on a daily basis.

 Request approval for a Use Permit to allow a retail use (pet store and animal exhibit) in GID zoning district for UNIVERSITY PLAZA - REPTILES AND REEFS (PL130383) located at 1415 East University Drive, Suite A-105. The applicant is Jared Ohsman.

CASE CONTINUED FROM THE NOVEMBER 6, 2013 HEARING OFFICER AT REQUEST OF STAFF

Jared Oshman was present to represent this case.

Sherri Lesser, Senior Planner, noted that this site is located on the south side of University Drive between Rural Road and McClintock Drive. The proposal is for the expansion of the existing use already open within the center. They are expanding their pet store and animal display exhibit into a neighboring suite. The proposed use is low volume of traffic and will complement the existing businesses within the center. Staff has received one letter of opposition to this request, citing their concern with odor. Ms. Lesser presented a copy of a recent Maricopa County Health Department report showing the applicant's business to be in compliance with all codes.

Mr. Oshman acknowledged the Conditions of Approval and his understanding of them. He explained the process of maintaining odor control by having fresh air circulating throughout. He also explained the source and origination of the animals within the exhibit.

Ms. MacDonald noted that this request meets the criteria for a use permit:

- 1. There will be no significant increase in vehicular or pedestrian traffic. They employ between 1 to 2 people, sharing parking and customers with the center. The existing retail use has existed, without creating a nuisance from traffic, for several years.
- 2. There should be no emission of odor, dust, gas, noise, vibration, smoke or heat from the expansion of the business.
- 3. The proposed development would not contribute to neighborhood deterioration or downgrade property values.
- 4. The proposed use appears to be compatible with surrounding structures and uses.
- 5. The proposed use appears to have adequate control of disruptive behavior.

DECISION:

Ms. MacDonald approved PL130383 / ZUP13129 subject to the following conditions:

- 1. This Use Permit is valid for Reptile and Reefs and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- 2. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
- 3. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
- 4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
- 5. Any intensification or expansion of use shall require a new Use Permit.
- 6. All business signs shall receive a Sign Permit. Contact Dean Miller at 480-350-8435.
- 7. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

9. Request approval for a Use Permit to allow outdoor display for **MEGA FURNITURE (PL130326)** located at 1315 West Elliot Road. The applicant is Karim Kanjiyani.

This case was continued from the November 6, 2013 Hearing Officer.

Steve Abrahamson, Planning & Zoning Coordinator, noted that this business was located at the SE corner of Elliot Road and Priest Drive near the Costco complex. The applicant is requesting to display furniture in front of the store to showcase new products and draw customer into the business. The applicant has provided several images of the area where they intend to display merchandise. Mr. Abrahamson presented the applicant's proposed plan which outlines the exact location of where the furniture would be displayed. Staff supports this request. No public input has been received.

Ray Garcia of Mega Furniture was present to represent this case. He acknowledged his understanding of the Conditions of Approval. He questioned the configuration that would be permitted in the outdoor display and whether it was permissible to have two items on the left and two items on the right.

Ms. MacDonald responded that five (5) items would be allowed to be displayed but no stacking of items would be permitted. If Mr. Garcia wishes to display two (2) items on the left and two (2) items on the right that would be allowed as long as it is within the designated display area. Ms. MacDonald noted that a Condition of Approval (No. 8) would be added to document this stipulation. Ms. MacDonald also explained that the Code Compliance Inspector had been out to this location several times to assess the outdoor displays of surrounding vendors and their compliance with necessary permits.

Ms. Amy Wozniak, Code Compliance Inspector for the City of Tempe, stated that she had been out to the business location several times. She questioned the exact location where the display items are allowed for Mega Furniture, stating that in her position as an inspector she wanted to be sure to have the correct information. Are the display items allowed to be on the right and left of the designated area, or on the right and left side of the entrance door?

Ms. MacDonald responded that the display is to be contained within the designated area location to the right of the entrance door.

Mr. Garcia acknowledged this information and stated that would be no problem. It is his desire to entice customers into the store and to provide a safe hazard free area for customers to enter and exit the business.

Ms. MacDonald noted that this request meets the criteria for a use permit:

- 1. The existing retail store is requesting to locate furniture currently displayed indoors to the outside to show prospective customers what is available. The furniture will be located near the entrance during business hours only, and is not anticipated to increase traffic beyond what a general retail center would have.
- 2. The applicant has provided a site plan showing the furnishings to be located near the door, no mirrors or highly reflective or illuminated materials will be displayed. There would be no emission of odor, dust, gas, noise, vibration smoke or heat from the furniture products on display.
- 3. The use permit to allow outdoor displays of retail furniture, showcasing product only during business hours and set back form the street front will not downgrade or deteriorate the surrounding property value.
- 4. The site has a large landscape and parking buffer between the entrance to the store and the street front. Furniture displayed will unlikely be visible outside of the parking lot. Display of outdoor product is common in larger box businesses and is compatible with existing surrounding structures and uses.
- 5. Mega Furniture was founded in 2002, and has grown eight times in the number of locations it operates according to the website. The Tempe site has been open since January, and has not had issues with customer control. There are no known nuisances with furniture stores that warrant special security controls.

DECISION:

Ms. MacDonald approved130326/ZUP13124 subject to the following conditions:

- 1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
- 2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
- If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining
 party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a
 public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the
 Use Permit.
- 4. Any intensification or expansion of use shall require a new Use Permit.
- 5. Furniture must be removed and stored indoors when store is not open for business.
- 6. Accessible path of travel, egress and fire access must be maintained at all times; furniture not to encroach into pedestrian walkway or outside of designated area blocked out on floor plan.
- 7. Items to be displayed shall not have reflective or illuminated surfaces that would become a nuisance or distraction to drivers by creating glare of flashes of light.
- 8. Outdoor display is to be limited to five (5) items within the designated display area. No stacking of display items is allowed. ADDED BY HEARING OFFICER

The next Hearing Officer public hearing will be held on December 3, 2013.

There being no further business the public hearing adjourned at 3:00 PM.

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Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:

Steve Al. h. many

Steve Abrahamson, Planning & Zoning Coordinator for Vanessa MacDonald, Hearing Officer

SA:dm